

UNOFFICIAL COPY

000 1830682-2-22

THIS INSTRUMENT WAS)
 PREPARED BY AND AFTER)
 RECORDING RETURN TO:)
 Maria F. Cardone)
 First American Bank)
 1650 Louis Avenue)
 Elk Grove Village, Illinois 60007)
 PERMANENT INDEX #:)
 08-35-200-021)
 STREET ADDRESS:)
 2416 Estes Street)
 Elk Grove Village, Illinois)

99886581

7802/0189 04 001 Page 1 of 5
 1999-09-20 11:43:25
 Cook County Recorder 29.00



5/BMP

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT is made this 1st day of September, 1999 by and between **Biagio's Gourmet Foods, Inc.**, an Illinois corporation (the "Assignor"), and **First American Bank**, an Illinois banking corporation (the "Assignee").

known as Trust No. 1-98-132 and Assignor (hereinafter collectively referred to as the "Borrower") and secured by a certain Mortgage of even date herewith upon the Premises;

WITNESSETH:

Assignor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Assignee all right, title and interest of the Assignor in, to and under the leases affecting the premises described on Exhibit A hereto (the "Premises"), or any part thereof, now existing or which may be executed at any time in the future during the life of this Assignment, and all amendments, extensions and renewals of said leases and any of them (all of which are hereinafter called the "Leases"), and all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Premises.

B. The payment of any other indebtedness or liability of Assignor to Assignee, now or hereafter arising;

C. The payment of all other sums with interest thereon becoming due and payable to Assignee under the provisions of the Mortgage or any other instrument constituting security for the Note; and

D. The performance and discharge of each and every term, covenant and condition of Assignor contained in the Note, Mortgage or any other instrument constituting security for the Note.

1. Assignor warrants, covenants, and agrees with Assignee as follows:

This Assignment is made for the purpose of securing:

(a) Assignor is the sole owner of the entire lessor's interest in the Leases, Assignor has not and shall not execute any other assignment of any of the Leases or the rents, income and profits accruing from the Premises, and Assignor has not and shall not perform any acts or execute any other instruments which might prevent Assignee from fully exercising its rights under any of the terms, covenants and conditions of this Assignment.

A. The payment of the indebtedness (including any extensions, renewals and refinancings thereof) evidenced by a certain Term Note of even date herewith in the principal sum of Four Million Seven Hundred Five Thousand Nine Hundred Twenty Seven and 40/100 Dollars (\$4,705,927.40) made by First American Bank, not personally but solely as Trustee under Trust Agreement dated 8/12/98 and known as Trust No. 1-98-129, First American Bank, not personally but solely as Trustee under Trust Agreement dated 8/12/98 and known as Trust No. 1-98-130, First American Bank, not personally but solely as Trustee under Trust Agreement dated 8/12/98 and known as Trust No. 1-98-131, First American Bank, not personally but solely as Trustee under Trust Agreement dated 8/12/98 and

(b) The Leases are valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, renewed nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Assignee, and shall not be altered, modified, amended, terminated, renewed nor shall any

BOX 333-CT1

UNOFFICIAL COPY

-2-

term or condition thereof be waived without the prior written approval of Assignee.

(c) There are no defaults now existing under any of the Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases. Assignor will fulfill or perform each and every condition and covenant of each of the Leases by lessor to be fulfilled or performed, give prompt notice to Assignee of any notice of default by Assignor under any of the Leases received by Assignor together with a complete copy of any such notice. Assignor shall, at the sole cost and expense of Assignor, enforce, short of termination of any Lease, the performance or observance of each and every covenant and condition of all such Leases by the lessee(s) to be performed or observed.

(d) Assignor has not and shall not collect, or accept payment of, rent under any of the Leases more than one month in advance.

(e) Assignor shall not, without the prior written consent of Assignee, enter into any other leases of all or any part of the Premises.

(f) Assignor shall and does hereby assign and transfer to the Assignee any and all subsequent leases upon all or any part of the Premises and shall execute and deliver at the request of Assignee all such further assurances and assignments as Assignee shall from time to time require or deem necessary.

2. This Assignment is absolute and is effective immediately. Notwithstanding the foregoing, until notified by the Assignee in writing that a default has occurred under the terms and conditions of the Note or Mortgage or any other instrument constituting security for the Note, Assignor may receive, collect and enjoy the rents, income and profits accruing from the Premises.

3. In the event of any default in the Note or Mortgage or any other instrument constituting security for the Note, Assignee may, at its option, receive and collect all such rents, income and profits as they become due, from such Premises and under any and all Leases of all or any part of the Premises. Assignee shall thereafter continue to receive and collect all such rents, income and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period.

4. Assignor hereby appoints Assignee its true and lawful attorney with full power of substitution and with power for Assignee in its own name, and capacity or in the name and capacity of Assignor to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Premises, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Assignor or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. Lessees of the Premises are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to the Leases to Assignee or such nominee as Assignee may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Assignor in respect to all payments so made.

5. Assignee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Assignee or its designee to enter upon the Premises, or any part thereof, with or without force and with or without process of law, and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of Assignor relating thereto, and may exclude the Assignor, its agents or servants, wholly therefrom. Assignor hereby grants full power and authority to Assignee to exercise all rights, privileges and powers herein granted at any and all times hereafter, without notice to Assignor with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Premises and of any indebtedness or liability of Assignor to Assignee, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Premises or of making same rentable, attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Assignor to Assignee on the Note, all in such order as Assignee may determine. Assignee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Assignor in the Leases. Assignor hereby agrees to indemnify Assignee and to hold it harmless from any liability, loss or damage including without limitation reasonable attorneys' fees which may or might be incurred by it under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the

18598866

covenants and agreements of Assignor in the Leases. Assignor hereby agrees to indemnify Assignee and to hold it harmless from any liability, loss or damage including without limitation reasonable attorneys' fees which may or might be incurred by it under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Assignee nor shall it operate to make Assignee liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Premises by the lessee under any of the Leases or any other party, or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee or stranger.

6. Assignee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals, or indulgences with respect to such indebtedness and may apply any other security therefor held by it to the satisfaction of such indebtedness without prejudice to any of its rights hereunder.

7. Assignee may, at its option, although it shall not be obligated so to do, perform any Lease covenants for and on behalf of the Assignor and any monies expended in so doing shall be chargeable with interest to the Assignor and added to the indebtedness secured hereby.

8. Waiver of or acquiescence by Assignee in any default by the Assignor, or failure of the Assignee to insist upon strict performance by the Assignor of any warranties or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

9. The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Assignee shall have under the Note, Mortgage, or any other instrument constituting security for the Note, or at law or in equity.

10. If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

11. Whenever, pursuant to this Assignment, consent by Assignee is necessary for the taking of any action, such consent shall not be unreasonably withheld.

12. All notices to be given pursuant to this Assignment shall be sufficient if mailed postage prepaid, certified or registered mail, return receipt requested, to the Assignor at Biagio's Gourmet Foods, Inc., 2416 Estes Street, Elk Grove Village, Illinois 60007, or to the Assignee at First American Bank, 1650 Louis, Elk Grove Village, Illinois 60007, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date such notice is deposited in the mail.

13. The term "Assignor" and "Assignee" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

14. This Assignment may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be signed and sealed as of the date first above written.

ASSIGNOR: Biagio's Gourmet Foods, Inc.

BY: Salvatore Cirrincione
Salvatore Cirrincione, President

Attest: Thomas Cirrincione
Thomas Cirrincione, Vice President

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

EXHIBIT A
Legal Description

I, James Berton, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Salvatore Cirrincione and Thomas Cirrincione, personally known to me and known by me to be the President and Vice President, respectively, of Biagio's Gourmet Foods, Inc. in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said Biagio's Gourmet Foods, Inc., for the uses and purposes therein set forth, and the said Salvatore Cirrincione then and there acknowledged that he, as custodian of the corporate seal of said Biagio's Gourmet Foods, Inc. did affix the said corporate seal to said instrument as his free and voluntary act and as the free and voluntary act of said Biagio's Gourmet Foods, Inc., for the uses and purposes therein set forth.

Lot 28 (except from said Lot 28 in the West 1,289.79 feet as measured along the North Line thereof and except also from said Lot 28 that part lying East of a straight line running through a point 1,539.79 feet, as measured at right angles to and drawn from the Mid-Point of the West line of said lot, East of and parallel with the West line of said Lot and said West line extended South to its Intersection with the South line of said Lot extended West) in Centex Industrial Park Unit No. 5, being a Subdivision in Section 35, Township 41 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

PIN # 08-35-200-021

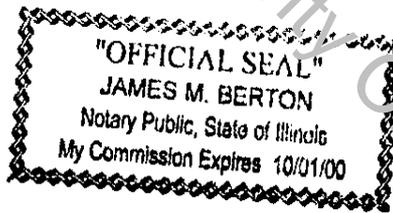
Commonly known as: 2416 Estes Street
Elk Grove Village, IL 60007

GIVEN under my hand and Notarial Seal this 1st
day of September, 19 99.

James Berton
Notary Public

My Commission Expires:

10-1-2000



18598863

UNOFFICIAL COPY

EXHIBIT A
Legal Description

99886581

Lot 28 (except from said Lot 28 in the West 1,289.79 feet as measured along the North Line thereof and except also from said Lot 28 that part lying East of a straight line running through a point 1,539.79 feet, as measured at right angles to and drawn from the Mid-Point of the West line of said lot, East of and parallel with the West line of said Lot and said West line extended South to its Intersection with the South line of said Lot extended West) in Centex Industrial Park Unit No. 5, being a Subdivision in Section 35, Township 41 North, Range 11 East of the Third Principal Meridian, in Cook County, Illinois.

PIN # Q8-35-200-021

Commonly known as: 2416 Estes Street
Elk Grove Village, IL 60007

Property of Cook County Clerk's Office